

Farm Service Agency, USDA

§ 700.26

(4) Structural measures authorized for installation under Pub. L. 83-566, Watershed Protection and Flood Prevention Act.

[45 FR 14009, Mar. 4, 1980, as amended at 46 FR 29454, June 2, 1981]

§ 700.25 RCWP contract.

(a) In order to participate in the RCWP, each landowner, operator, or person who controls or shares in the control of a tract of land on which one or more of the BMP's will be performed must execute the RCWP contract in which they agree to carry out the water quality plan.

(b) The participant must furnish satisfactory evidence of his or her control of the tract of land on which one or more of the BMP's will be performed.

(c) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the County ASC Committee.

(d) RCWP contracts shall include the basic contract document, the participant's water-quality plan, schedule of operations, and special provisions as needed.

(e) Technical assistance will be provided to participants to develop the water quality plan and to install BMPs.

(f) SCS or its designee shall approve the technical adequacy of the Water Quality Plan.

(g) Participants shall install BMPs according to the specifications that are applicable at the time the contract is signed or the measures are installed.

(h) The contract period is to be not less than 3 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(i) BMPs are to be maintained by the participant at no cost to the RCWP.

(j) All BMPs in the water-quality plan shall be maintained for the established life span of the BMP.

(k) The County ASC Committee in consultation with the LCC shall establish a BMP life span for each BMP offered in the approved project area. Each BMP cost-shared shall have a life span of at least 5 years, unless other-

wise approved by the Administrator, FSA.

(l) A participant may enter into a pooling agreement with other participants to solve mutual water quality problems.

(m) Participants are responsible for:

(1) Accomplishing the water quality plan.

(2) Obtaining and maintaining any required permits and easements necessary to perform the planned work.

(3) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications.

(4) The operation and maintenance of BMPs installed during the contract period.

(5) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(n) Unless otherwise approved by the NCC, the County ASC Committees shall not enter into any new RCWP contracts after five (5) years from the date when RCWP funds are first made available to the project.

(Pub. L. 96-108, 98 Stat. 821, 835 and Pub. L. 96-528, 94 Stat. 3095, 3111)

[45 FR 14009, Mar. 4, 1980, as amended at 48 FR 42803, Sept. 20, 1983]

§ 700.26 Contract modifications.

(a) The County ASC Committee by mutual agreement with the landowner or operator, may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, and/or water quality programs.

(b) Requirements of active contracts may be modified by the County ASC Committee only if such modifications are specifically provided for in these regulations. The concurrence of SCS or its designee and the CD are necessary when modifications involve a technical aspect of the participant's water quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

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(c) Contracts may be modified when the participants add or delete land to the farm.

(d) Contracts may be modified to add, delete, or substitute BMPs when:

(1) The installed measure failed to achieve the desired results through no fault of the participant.

(2) The installed measure deteriorated because of conditions beyond the control of the participant.

(3) Another BMP will achieve the desired results.

(4) The extent of the BMP is changed.

(e) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion. Other time schedule revisions will require modification.

(f) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on that portion of the contract, the participant:

(1) Forfeits all right to any future cost-share payments on the transferred portion.

(2) Must refund all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except the payment may be retained where it is determined by the County ASC Committee after consultation with the technical agency and the CD, that the established BMPs will provide water quality benefits for the designed life of the BMP.

(g) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, may be made to the participant who applied the BMPs and had control prior to the transfer.

(2) The new land owner or operator is to assume all obligations of the previous participant with respect to the transferred land.

(3) The contract with the new participant is to remain in effect with the original terms and conditions, except that;

(4) The original contract is to be modified in writing to show the changes caused by the transfer. If the

modification is not acceptable to the County ASC Committee, the provisions of paragraphs (f)(1) and (2) of this section apply.

§ 700.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal cost-share payments are to be made by the County ASC Committee upon certification by the District Conservationist, SCS, or designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum RCWP cost-share payment to a participant shall be limited to \$50,000.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the County ASC Committee at the cost-share percentage specified in the project approval notice and by one of the following methods as set out in the contract:

(i) Average cost; or

(ii) Actual cost but not to exceed the average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the County ASC Committee for each project using cost data from the local area. These costs shall be reviewed by the SCC for consistency with average costs in other USDA programs. These average costs shall be updated annually by the County ASC Committee in consultation with the LCC.

(e) *Application for payment.* Cost-share payments shall be made by the County ASC Committee after a participant has completed a BMP or an identifiable unit of a BMP and it is determined to